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(1)
Bertie Hopkins, Gent. and Margaret his Wife, APPELLANTS.

Isaac Honywood, Esq; Executor of Edward Honywood, Esq; deceased, RESPONDENT.

The APPELLANTS CASE.

THAT two Partnerships in Trade having been entred into, and successfully carried on at Alicant in Spain, viz. the one of them being entred into in May 1698. between John Munyon, the Appellant Margaret's late Brother, deceas'd, Edward Honywood, and John How, for the Continuance of three Years; and the other of them being entred into in April 1701. between John Munyon, and the said Edward Honywood, for the Continuance of two Years, all the Books of Accounts, Moneys and Effects of and belonging to such said Partnerships, did on the said John Munyon's Death, come to the Hands and Possession of the said Edward Honywood, who was the surviving Partner, or to the Hands and Possession of the Respondent, by the Order, Privy and Direction of the said Edward Honywood; and they refusing to come to a fair Account touching the same, the Appellants, in Right of the Appellant Margaret (who is the Sister and Representative of the said John Munyon, deceas'd) in Michaelmas Term 1711. exhibited their Bill into the High Court of Chancery against the said Edward and Isaac Honywood, and the said John How and Thomas Honywood, for a Discovery of the Effects of the said Partnership, and to be paid John Munyon's Share thereof; and also to have an Account of the separate Trade and Dealing of the said John Munyon, he by the Articles of Partnership having reserved to himself a Power of trading separate from the said Company.

That by Reason of the wilful Delays of the said Defendants in answering the Appellants Bill, viz. "Some of them putting in three, and others two insufficient Answers, the Cause could not (tho' prosecuted with the utmost Vigour by the Appellants) be brought to hearing till the 24th of October 1718. when an Account was decreed to be taken by Mr. Lovibond, a late Master of the said Court, of both of the said Partnerships, and of the separate Estate of the said John Munyon; and also of what Fifth the Appellant Bertie Hopkins left in the Hands of the said Edward Honywood, what the same were sold for; and the Master was to make separate Reports of the Partnerships, and also of the said Munyon's separate Estate, and of the said Fifth: And for the better taking the said several Accounts, in the first Place all Parties were to produce on Oath before the said Master, all Books of Account, Papers and Writings, which related thereto; and if any Books should appear to have been altered or wanting, the Master was to state the Matter touching the same specially to the Court; and what the Master should find due to either Party on the said several Accounts, was to be paid accordingly; and the Consideration of Interest for the Money that should be reported due, and also the Consideration of Costs was reserved, till after the said Accounts were taken, and the Master should have made his Report.

That pursuant to such Decree the Appellants produced on Oath before the said Master, all Papers and Writings in their Custody or Power relating to the Matters in Question, but they had none of the Books or Accounts: And the Appellants summoned the said Edward Honywood, who had possessed himself of all the Books and Accounts of the said Partnership, and of the said John Munyon's separate Estate, to bring before the said Master on Oath, all Books, Papers and Writings in his Custody or Power, relating to the said Matters in Question; and the said Edward Honywood thereupon brought in diverse of the said Partnership Books and Papers; and on the 9th of December 1719. made Affidavit, that they were all that were, or ever had been in his Custody or Power; but the said Master in proceeding to take the Accounts directed by the said Decree, and looking into such Books, found that the same were altered, and several other Books belonging to the said Partnerships, were not brought before him: And on the 1st of May, 1725. certified to the Court, that the said Edward Honywood had not produced the several Books of the Partnerships mentioned in the Schedule to his Certificate annexed, and that those which were produced were altered, and the true Cash Book suppress'd, destroy'd, or conceal'd; and that the Cash Book produced had been made up in England; and that without the Books which were concealed or unproduced, it would be impossible to make up the Accounts of the said Trade or Partnership, or to discover the Gains made therein.

That by Order of the 21st of July 1725, the Cause was transferred from the said Mr. Lovibond, to Mr. John Bennet, one of the present Masters of the said Court, before whom the Books, Papers and Writings which had been brought by the said Edward Honywood, before the said Mr. Lovibond were produced: And the said Edward Honywood made another Affidavit on the 21st of January 1725, that he had produced before the said Mr. Bennet, all Books of Accounts, Writings and Papers which he ever had in his Custody or Power, relating to all or any of the Accounts or Matters in Question: But the said Mr. Bennet on looking into such Books, found that several of the said Partnership Books were still wanting; and thereon the 8th of March, 1725. certified that Edward Honywood had by his Affidavit sworn before him the 21st of January then last, made Oath that he had produced before him all Books of Account, Writings and Papers which he ever had in his Custody relating to all, or any of the Accounts and Matters in Question; but that it being insisted on by the Appellants, that the said Edward Honywood had not brought before him all the Books, Papers and Writings, but that several of the most Material of them were wanting and concealed; he, on Enquiry into that Matter, found by the Deposition of Thomas Cornish, who was Apprentice to the Copartners, and dwelt with them at the Death of the said John Munyon, and who was concerned and employed in keeping of the Accounts of the said Partnerships, and the other Accounts in Question, that the said Accounts were kept in the several Books mentioned in the first Schedule of such said Certificate; (which by such said Schedule appear to be nineteen in Number) and that on the said Munyon's Death, all the Books of Account, Papers and Letters relating to the said several Partnerships which were of any Value or Use were with his Assistance, pack'd up in a large Chest or Trunk; and none were left behind, except some old Papers which were thought useless, and were brought over to England by Thomas Honywood, who undertook to deliver them to the said Edward Honywood; and the said Edward Honywood by his Answer, swore that he believed he received all the Books of Account, Papers and Memorandums brought over by the said Thomas Honywood, except two Copy Books of Letters; but that upon looking into the Books and Papers brought before him by the said Edward Honywood, and particularized in the second Schedule to his Report annexed, some of which had been wrote, and Entries made in others of them since the said Books came to him in England; and on comparing the same with the Books, Papers and Writings which were brought over from Spain, and are refer'd to by several Letters wrote by him to the Appellant Bertie Hopkins, and others, since the Books, Papers and Writings came to his Hands in England; he found that the several Books and Papers relating to the Matters in Question, and mentioned in the third Schedule to his Report annex'd, were not brought before or left with him the said Mr. Bennet, by the said Honywood; and from what he found from the Deposition of the said Thomas Cornish, and George Thornley an Accountant, and the Nature of the several Accounts,

counts, he conceiv'd it impracticable to take the Accounts in Question, unless the said Books and Papers mentioned in such said third Schedule were produced.

30 July 1726. Order for confirming the Report of the 8th of March, on waving the Exceptions to it.

That to the Report of the eighth of March, 1725. the said *Edward Honeywood*, and the Respondent *Isaac Honeywood*, took several Exceptions, which were brought on to be argued the 30th of July, 1726. But the said *Edward* and *Isaac Honeywood* conscious of the Truth of this Report, in Court waved their said Exceptions, and thereon, by Order of the said 30th of July, the said Report was confirmed, and the Appellants ordered to be paid the 5*l*. Deposit.

10 March 1725. Order for examining *Edward Honeywood* on Interrogatories, touching the Books by him concealed.

That on the 10th of March, two Days after the Date of the said Report, the Appellants moved that the said *Edward Honeywood* might bring in the Books, certified to be wanting, in four Days, or stand committed; when it was ordered that he should be examined on Interrogatories touching the said Books; but to prevent the same, he petitioned the present Lord Chancellor, which his Lordship the 25th of April, 1726. ordered to come on the then next Day of Petitions. Which Petition after setting out the filing the Appellants Bill, and the Proceedings thereon, did set forth, that he was informed by his Solicitor, that Mr. Bennet had certified, that several of the Books mentioned in a Schedule to his Report were not brought before him, without which he was not able to take the Account, and that the Appellants had thereupon moved he should stand committed; unless he produced the same, and that the said *Edward Honeywood* was on that Motion ordered to be examined on Interrogatories; and his said Solicitor desiring that a diligent Search might be made to see if he had any other Books or Papers, and such Search being made by his said Solicitor, there were found among the Books relating to a former Partnership between *Caunter, How and Honeywood*, several Books and Papers, which his said Solicitor informed him ought to have been produced before the Master; that such Books so found were put into a dark Closet behind some old Hangings, so long ago as 1712. the said *Edward Honeywood* being then told, by one *Hodgkins* who prepared his Answer, that the same were not required by the Appellants Bill to be set forth, but that he was then ready and willing to produce before the said Master, all the Books, Papers and Accounts, in his Custody or Power; as well those which related to the second Partnership in Question, as those that related to the former Partnership between *Caunter, How and Honeywood*; and thereby prayed for Leave to bring in the Books he had found as aforesaid, and that the Order for his being examined on Interrogatories might be discharged: And the said *Edward Honeywood* on the said 25th of April, 1726. made an Affidavit, and annex'd it to his said Petition, thereby swearing very nearly in the Words of his Petition; and also that about the Month of November, 1712. the Books, Papers and Writings in his Custody were ordered to be produced before, and left with Mr. *Browning*, where the said *Edward Honeywood* produced and left the same, and made Affidavit that they were all that he had in his Custody or Power; and afterwards the same Books were, on hearing these Causes in Chancery, ordered to be transferr'd to Mr. *Lovibond*, by whom the Accounts in Question were directed to be taken, and on or about the 9th of December, 1719. the same were transferr'd accordingly; and the said *Edward Honeywood* then made Oath before the said Mr. *Lovibond*, that the Books so transferr'd, were all the Books which he, or any other Person in Trust for him, had in their Hands, Custody or Possession: And that the Plaintiffs, now the Appellants having obtained an Order to transfer the Reference to Mr. *Bennet*, who required the said *Edward Honeywood* to bring the said Books and Papers before him on Oath, the said *Edward Honeywood* the 21st of January, 1725. made Oath that the said Books and Papers so transmitted to him, were all the Books and Papers which he, or any other Person in Trust for him had; that he had no Design or Intention to secrete or conceal any Books or Papers, and the only Reason he did not produce them was, because he did not know they were necessary to be produced, he having been informed to the contrary by Mr. *Hodgkins*.

25 April 1726. *Edward Honeywood* petitions Lord Chancellor for Leave to bring in Books.

25 April 1726. *Edward Honeywood's* Affidavit annexed to his Petition.

That on the 28th of April 1726, it was ordered that the said *Edward Honeywood*, according to such Petition should be at Liberty to bring in the said Books, and should be examined on Interrogatories touching any other Books by him concealed, and according to such Order, Interrogatories were prepared; which the same Defendants for Delay, prayed might be settled by the Master, which was granted, and the said Interrogatories were settled accordingly; but the said Defendant for farther Delay, excepted to the Report of the Interrogatories so settled, which Exceptions the Appellants brought on to be argued at the same Time with the Exceptions taken to the said Report of the 8th of March, viz. on the said 30th of July 1726. And the Lord Chancellor, although the said *Edward Honeywood* did then wave his Exceptions to the said Report of the 8th of March 1725. which certified that he had as aforesaid, concealed the Books of the Partnerships, by Means of which the Accounts could not be taken, and which was an Admission by him of the Truth of such Report; and though he had by the said Affidavit of the 25th of April 1726. owned that he had made several Affidavits, viz. one before Mr. *Browning*, another before Mr. *Lovibond*, and the third before Mr. *Bennet*, to the Effect before-mentioned; yet his Lordship, thought fit to keep on Foot the Orders of the 10th of March, 1725. and the 28th of April, 1726. for examining the said *Edward Honeywood* on Interrogatories; and in the said Order of the 30th of July 1726. directed and pronounced the Words of an Interrogatory on which the said *Edward Honeywood* was to be examined; and pending the arguing the aforesaid Exceptions, and the farther Delays the said *Edward Honeywood* used to put off his being examined on Interrogatories, he the said *Edward Honeywood* the 4th Day of January, 1726. died, without having put in his said Examination, or produced the Books certified to be wanting; for though he had by his Petition prayed Leave to bring in the Books he had found, and had Leave to bring them in, and did bring in nineteen other Books, yet there was not among them one of the Books certified to be wanting.

28 April 1726. Order that *Edward Honeywood* have Leave to bring in the Books he had found, and that he should be examin'd as to any other Books by him concealed.

That the said *Edward Honeywood* left the Respondent his Executor and Heir at Law, against whom the Cause, by Order dated the 6th of July 1727. was revived, and he hath put in his Answer to the Appellants Bill of Revivor; but the said Respondent was also before an original Defendant in the said Cause, as he was an Agent and Correspondent of the Partners, and transacted many Affairs relating to the Partnerships, and received great Part of the Effects thereof.

4 January 1726. *Edward Honeywood* died.

6 May 1727. Order to revive the Suit against the present Respondent.

That by Means of the said fraudulent Practice of the said *Edward Honeywood*, the Appellants have been kept in the Court of Chancery for the Space of eighteen Years, and after all that Length of Time all the Discoveries the Appellants might expect touching the Books concealed, were by the Death of the said *Edward Honeywood* intirely at an End; for the Respondent, who is his Executor, the 11th of July 1727, made Affidavit that he had not in his Custody or Power, or could produce the Books in the said third Schedule of the Report of the 8th of March, certified to be wanting, or any of the Books or Effects relating to the Matters in Question, save a Cash-Book, an Invoice-Book, and his Testator's Pocket Books, which he apprehended did not relate to the Matters in Question, but that there might be in them some Entries relating to the Matters in Question, and therefore he was ready to produce them, and save the Respondents private Books relating to his own private Trade and Dealing, and save those produced by his Testator before the Master.

11 July 1727. Respondent made an Affidavit that he had none of the Books certified to be concealed.

That the Appellants by Reason of the great Expences attending the Prosecution of the said Suit, being reduced to very low Circumstances, and quite tired with the Length thereof, were desirous to come at an End of it, tho' greatly to their Loss, and therefore laid before the Master a Charge founded on the Proofs in the Cause; on which the Master proceeded, and after a Year's Time had been spent therein, the Master on the 27th of June 1728. made his Report of the first Partnership, and thereby reported that the same was entred into on the 12th of May 1698. between the said *John Munyon*, deceased, *Edward Honeywood* and *John How*, deceased; and that by Articles the Joint-stock thereof was to be 20,000 Livres Valentia Money, being about 5000*l*. Sterling, to be advanced in the following Proportions, viz. the said *John Munyon* to advance three Eighths, the said *Edward Honeywood* to advance three Eighths, and the said *John How* the remaining two Eighths; and that the said *John Munyon* did advance his Share of the said Joint-Stock, which was 1875*l*. Sterling. That the Partnership Trade

27 June 1728. Report of the first Partnership.

was carried on for three Years very successfully, and that the Profits thereof only for Commissions as Factors for several Merchants in *England* and *Ireland*, amounted to between 1500*l.* and 1800*l.* per Ann. and that other great Profits were made therein, but that there had been no Dividend made of the Gains of the said Partnership, or any Accounts adjusted thereof; but that in *May* 1701. when the said Partnership ended, the said *John Munyon* and *Edward Honywood*'s Share and Stocks therein were carried into and made the Capital Stock of the second Partnership, in which the said *John Munyon* becoming blind, and soon after dying, and the War breaking out with *Spain*, all the Books belonging to both Partnerships came to the Hands of *Edward Honywood*, or his Agents in *Spain*, and were by them shipp'd off for *England* and safely arrived there; and that the said *Edward Honywood* possess'd himself thereof: But on looking into such of them as were brought before him, he found them to be very imperfect, some of them being wholly wrote, and diverse Entries and Alterations made in others of them, since they came to *England*; and that he found by his Reports of the 8th of *March* 1725. and the 27th of *June* 1727. that several material Books used in the said Partnerships which came to the Hands of the said *Edward Honywood*, had not been produced either by him or the Respondent his Representative, although ordered to be all produced on Oath, but were destroyed or secreted; without which he reported the Accounts in Question could not be taken and adjusted, or the Gains and Advantage made by the said first Partnership in Trade by Commission or otherwise be ascertained; but that it being proved that the said Trade, during the Partnerships, was carried on with great Success and Profit, and very inconsiderable Losses, which Profits were carried into the Joint-Stock of the second Partnership, he therefore conceived the Appellants were entitled to a Moiety of the Profits and Gains of the said second Partnership, when the same should be ascertained, and concerning which he was to make a separate Report.

August 1728.
part of the second
partnership.

That on the 16th of *August* 1728. the said Master made his Report of the second Partnership which he reported was entered into between the said *John Munyon* and *Edward Honywood* the 12th of *May* 1701. and was to continue two Years; and that for carrying on the Trade thereof, all the Effects and Profits arising from the first Partnership belonging to the said *John Munyon* and *Edward Honywood*, being six Eighths of 3750*l.* and six Eighths of 1650*l.* per Ann. being a Medium between 1500*l.* and 1800*l.* per Ann. proved to be gained by Commissions and Factorage, during the three Years of the first Partnership, besides the Profits made by them as Merchants, for which he had made no Allowance, were carried by them into the second Partnership, and it appeared by *Edward Honywood*'s Answer, that no Money was taken out of the Stock in Partnership; but for Pocket and House Expences; and finding by the Proofs in the Cause that the second Partnership for the first Year thereof was as successful and gain'd as much by Commissions as the first Partnership gained, but that the last Year thereof the Trade was not so profitable, and that therefore he had allowed them nothing for that Year; and that it appearing by several Reports, that divers Books of Account relating to the said second Partnership had not been produced by *Edward Honywood*, tho' by Letters and his Answer, he had owned to have had them in his Custody, and for want whereof he found the Account of the second Partnership impracticable to be taken, did therefore allow to the Appellants as Representatives of the said *John Munyon*, half of the Sum of 3750*l.* capital Money, advanced by the said *Munyon* and *Edward Honywood*, respectively in Moieties being 1875*l.* and also three Eighths of 1650*l.* per Ann. being a Medium between 1500*l.* and 1800*l.* proved to be gained yearly by Commissions and Brokerage, during the three Years of the first Partnership, and brought into the Stock of the second Partnership, being 1856*l.* 5*s.* and also a Moiety of 1650*l.* got by Commissions and Brokerage during the first Year of the second Partnership, being 825*l.* which said three Sums of 1875*l.* 1856*l.* 5*s.* and 825*l.* being added together, make 4556*l.* 5*s.* and that therein he had made the Appellants no Allowance for any Profits made by Trade and Merchandize during the said Partnerships, nor had allowed any Thing for the last Year of the second Partnership; and in Regard he the said Master had found by the Proofs in the Cause and the Books that were then brought before him, that the said *Edward Honywood* left *Spain* and came to *England* in *August* 1702. and that in 1701. 1702. and 1703. all the Effects of the second Partnership were shipp'd off and consigned to several Merchants in *England*, and that the said *Edward Honywood* who had possessed himself of all the Books of the Partnership, made up and stated Accounts with the several Merchants to whom such Effects of the said Partnership were consigned, and that the said *John Munyon* died in *Spain* in *May* 1703. without receiving any Part of the Produce and Profits of the second Partnership; he reported that therefore he conceived it reasonable that the said *Edward Honywood*'s Estate, now in the Hands of the said Respondent *Isaac Honywood* his Executor, should be charged with, and stand liable to the Payment to the Plaintiffs the now Appellants, of the said Sum of 4556*l.* 5*s.* and the rather because he had secreted the Books whereby it might appear what was due to the Plaintiffs the now Appellants, and by whom the same ought to be paid.

December 1728.
Exceptions to the
two last Re-
ports were argued,
thereon two
orders directed.

That the present Respondent took four Exceptions to the Report of the 27th of *June*, 1728. and four Exceptions to the Report of the 16th of *August* 1728. which Exceptions the Appellant brought on to be argued before the present Lord High Chancellor on the 7th Day of *December* 1728. when his Lordship was pleased to over-rule the first Exception to the Report of the 27th of *June* 1728. which was for that the said Master had therein reported, that the said *John Munyon* and his Partners had brought into the Joint Stock their whole Money, whereof the said *Munyon*'s Share was 7500 Livres *Valentia* Money, which being reduced to *English* Money at 5*s.* per Livre, amounted to 1875*l.* whereas the said *Munyon* did not bring in the said 7500 Livres, or any Part thereof. And upon the remaining Exceptions, his Lordship was pleased to Order the following Issues to be tried at Law at the Sittings in the *King's-Bench*, *London*; wherein the Appellants were to be Plaintiffs, and the Respondent *Isaac Honywood*, Defendant, viz. first to try whether any Thing, and what, belonged to the said *John Munyon*, deceas'd, for the Profits and Gains of the Partnership enter'd into by the said *John Munyon*, *John How*, and *Edward Honywood*, the 12th of *May* 1698. being the first Partnership; in which Action it is to be admitted that the said *John How* is intitled to two Eighths, *Edward Honywood* to three Eighths, and *John Munyon* to the other three Eighths, and that *John Munyon* brought into Partnership 7500 Livres *Valentia* Money, amounting to 1875*l.* *Sterling*, and that the other two Partners brought in their said respective Shares; and the second Issue is to try what was the Profit or Loss of the second Partnership between the said *Munyon* and *Honywood*, which began the said 12th of *May* 1701. and determined the said 12th of *May* 1703. on which Trial it is to be admitted that the Stock brought by the said *Munyon* and *Honywood*, was the principal Money by them brought in respectively on the first Partnership, and also such Sums as shall be found on the first Issue to have been gained by the said *Honywood* and *Munyon*, and what shall upon such Issue be found to belong either to the said *Honywood* or *Munyon* for their respective Shares of the Capital brought in upon the said second Partnership, and the Profits of the second Partnership shall be taken so to be, and they are after such Trial to resort back to the said Court of *Chancery*, for farther Directions, and the Master was to settle the Issues if the Parties differed about the same.

As to such Part of the said last Order of the 7th of *December*, 1728. as directs the said Issues to be tried, the Appellants humbly apprehend themselves aggrieved for the following, and diverse other Reasons.

- I. For that the said Matters so directed to be tried, are in their own Nature improper for a Trial at Common Law, being Matters of Account, and those transacted out of this Kingdom about 30 Years ago; and are of such a Kind, as a particular and deliberate Examination thereof, and into the various Circumstances of the same, would necessarily require a much larger Time, than any Judge or Jury can have at a Trial at Law.
- II. For that the Accounts directed to be taken at such Trials, by Reason of the wilful Concealment of the Books of the said Partnership by the said *Edward Honywood*, are conceived to be impracticable.

- III. In regard the said *Edward Honeywood* did so wilfully conceal such Books, tho' ordered to produce the same by several Orders of the said Court of *Chancery*, from the Year 1712, till his Death, thereby to prevent the taking such Account before the Master; and in regard he appears to have been mistaken in his Affidavits from Time to Time touching the said Books of Account, and since the said Books continue still concealed, the Appellants are advised that what the Master has reported due to them, after about 18 Years Suit for the same in the Court of *Chancery*, ought now to be paid to them, without such Trials, in Part of what is their just Due; and that the Exceptions taken to the said Reports by the Respondent, ought to be over-ruled.

For which, and diverse other Reasons, the said Appellants humbly hope, that such Part of the said Order of the 7th of December, 1728. as directs the said Issues to be tried, shall be reversed, and that the said Exceptions shall be over-ruled; and that the Appellants may be paid the 4556 l. 5 s. so reported due as aforesaid; and that such Order for the Relief of the Appellants shall be made, as your Lordships shall think reasonable.

C. TALBOT.
THO. LUTWICHE.

Berrie Hopkins, Gent. and } APPELLANTS.
Margaret his Wife,

Isaac Honeywood, Esq; }
Executor of Edward Ho- } RESPONDENT.
nywood, Esq; deceased.

The APPELLANTS CASE.

To be heard at the Bar of the House of Lords,
on the of 1730.



